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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5912 OF 2005

Mr. Anandrao Vishnu Doiphode ... Petitioner

Vs.

Ms. Vimala Harakchand Jain ... Respondent

Mr. Tejas Deshpande h/f. M/s. Deepak & Co. for the petitioner.

Mr. Shreekant V. Gavand for the respondent.

CORAM: SMT. RANJANA DESAI, J.

DATED: 6TH SEPTEMBER, 2005.

P.C.:-

1. The petitioner is the plaintiff in Regular Civil Suit No.53 of 2004. The petitioner claims to be the owner of the suit property. The suit is filed for a declaration that he is the owner of the suit property and for an order of injunction, permanently restraining respondent/defendant from disturbing the plaintiff's possession of the suit property.

2. Admittedly, the petitioner filed an application for interim injunction and the said application was granted by the trial court as per order passed below Ex-5 in the suit. Thereafter, the petitioner filed application (Ex-23) contending that the defendants have wrongly disconnected the electric meter and, therefore, there is obstruction to his peaceful possession and enjoyment of the suit property. The petitioner prayed that the

respondent be restrained by an order of injunction from raising any objection of whatsoever nature to the plaintiffs taking the electricity connection in the suit property. By order dated 8/2/2005, the trial court allowed the application. It was held that the plaintiff is entitled to fix the electric meter in the disputed house at his own costs. The plaintiff was directed to file an undertaking that as and when the court orders the removal of the electric meter, he will follow that order without undue delay, at his own costs. The defendant was further directed not to obstruct the plaintiff while affixing the electric meter.

3. The defendant carried the matter in appeal to the District Court at Alibag and the District Court allowed the appeal and set aside the order dated 8/2/2005 passed by the trial court and, hence, this writ petition.

4. I have heard the learned counsel appearing for the parties. It appears from the order passed by the trial court that in the written statement, the defendant has admitted that the plaintiff was enjoying the electricity connection. Prima facie, it appears that the plaintiff's possession is not disputed. Only the character of his possession is disputed. Electricity being an essential amenity, the plaintiff cannot be deprived of it. Therefore, the electricity connection must be restored. The learned counsel for the respondent states that the electric meter stood in the name of the

respondent/defendant. If that is so, the petitioner must be allowed to apply for restoration of electricity connection and electric meter but they will stand in the name of respondent as admittedly, originally they stood in his name. However, this order will be without prejudice to the rights and contentions of both sides. The restoration of the meter will obviously not give rise to any rights in favour of the petitioner. Hence, I pass the following order.

O R D E R

"The petitioner/plaintiff shall make an application for restoration of electricity connection and the electric meter. The respondent/defendant shall not object to the restoration of the electricity connection and the electric meter. The electric meter shall stand in the name of the respondent as it is an admitted position that originally it stood in the name of the respondent. However, the restoration of electricity connection and installation of the electric meter is without prejudice to the rights and contentions of both sides. This court has not expressed any opinion on the rights and contentions of both sides and the rights and contentions of both sides are kept

open. Needless to say that the expenses of the restoration of the electricity connection and electric meter will be borne by the petitioner. All this arrangement will obviously be subject to the final decision of the suit.

I am informed that at one stage, the petitioner had got the electric supply restored and the learned counsel for the petitioner is not sure whether it was in the name of the petitioner or in the name of the respondent. However, if it was in the name of the petitioner, the petitioner shall see to it that he gets the same transferred in the name of the respondent. The petitioner shall pay all the bills in respect of the consumption of electricity.

Petition is disposed of in the aforestated terms."

(SMT. RANJANA DESAI, J.)